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BRICKFIELD BURCHETTE
RITTS & STONE, PC

WASHINGTON, D.C.
AUSTIN, TEXAS

April 27, 2007

Via Federal Express


Mr. Charles Terreni
Chief Clerk
Public Service Commission of South Carolina
101 Executive Center Drive
Suite 100
Columbia, SC 29210

Re: Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc. –
Annual Review of Base Rates for Fuel Costs.
Docket No. 2007-1-E

Dear Mr. Terreni:

I have enclosed an original and eleven copies of *Nucor Steel-South Carolina's Motion to Compel, or in the Alternative, Request for Leave to File More than 50 Data Requests* for filing in the above referenced matter. Please date stamp and return the extra copy for our files in the enclosed envelope.

Sincerely,



Michael K. Lavanga

Enclosure

cc: All Parties

**BEFORE THE
PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA**

DOCKET NO. 2007-1-E

IN THE MATTER OF:)	Nucor Steel-South Carolina's
Carolina Power & Light Company)	Motion to Compel or, in the
d/b/a Progress Energy Carolinas, Inc.)	Alternative, Request for Leave
Annual Review of Base Rates for)	to File More than 50 Data
Fuel Costs)	Requests

Nucor Steel-South Carolina ("Nucor") hereby moves, pursuant to Rule 103-840 (and revised Rule 103-829) of the Rules of Practice and Procedure of the Public Service Commission of South Carolina ("Commission"), that the Commission issue an order compelling Carolina Power & Light d/b/a Progress Energy Carolinas, Inc. ("PEC") to respond to Nucor's first and second set of data requests, and all subsequent data requests served by Nucor. PEC objects to Nucor's data requests on the grounds that they violate Rule 33 of the South Carolina Rules of Civil Procedure ("Rule 33") which limits the number of interrogatories to 50, including subparts, unless authorized by the Commission. As discussed further below, the Commission should grant Nucor's Motion to Compel because: (1) Rule 103-851¹ of the Commission's Rules of Practice and

¹ Rule 103-851 provides: "(A) Any material relevant to the subject matter involved in the pending proceeding may be discovered unless the material is privileged or is hearing preparation working papers prepared for the pending proceeding." Section (B) of Rule 103-851 describes in detail the Subsection (B) describes in detail the process and requirements for serving and answering written interrogatories. Rule 103-851 has been superseded by Rule 103-833 in the Commission's revised rules. Sections (A) and (B) of Rule 103-833 are identical to Sections (A) and (B) of Rule 103-851. The only difference between the old rule and the new rule is that Rule 103-833 includes a new section (C) that addresses written requests for production of documents and things. The arguments in this Motion to Compel are equally applicable under old Rule 103-851 and new rule 103-833, but for purposes of economy Nucor only cites to old Rule 103-851 in this Motion, since

Procedure governs data requests in proceedings before the Commission, and this rule includes no limit on the number of data requests a party may serve; (2) Rule 33 does not impose a 50-question limit where the Commission clearly did not intend to impose such a limit; and (3) declining to grant Nucor's Motion to Compel would create a generic rule limiting parties to only 50 interrogatories without leave of the Commission, an unreasonable and damaging rule given the complex nature of the industries the Commission regulates and the complexity of Commission proceedings in general. Nucor requests that the Commission rule on this motion on an expedited basis, given Nucor's need to have the information requested to fully prepare its case, and the condensed schedule in this proceeding.

1. On March 30, 2007, counsel for Nucor served PEC electronically and by hard copy delivery with its First Set of Continuing Data Requests. Nucor's first set of data requests contained 50 questions, not including subparts. On April 16, 2007, PEC responded to a handful of the data requests in the first set, and objected to the first set overall on grounds that it was in violation of Rule 33 of the South Carolina Rules of Civil Procedure which limits the number of interrogatories to 50, including subparts, unless authorized by the Commission. PEC also made several additional general and question-specific objections. Notwithstanding PEC's general objections, PEC provided responses to most of the data requests in Nucor's first set on April 19th, April 20th, and April 27th. It is

that was the rule in effect when Nucor served its first and second sets of data requests in this proceeding.

unclear, however, whether PEC refused to provide any information requested in Nucor's first set of data requests on grounds that the first set violated Rule 33.

2. On April 19, 2007, Nucor served PEC electronically and by hard copy delivery with its Second Set of Continuing Data Requests. On April 20, PEC objected to Nucor's second set, claiming that the second set is in violation of Rule 33. PEC states that it will not respond to Nucor's second set of data requests.

3. Rule 33 addresses the use of written interrogatories in a civil action. Rule 33(b)(8) provides that in all actions in which the amount in controversy is not less than \$25,000, the total number of general interrogatories to any one party shall not exceed 50 questions, including subparts, except by leave of court for good cause shown.

4. PEC is wrong when it asserts that Rule 33 limits the number of interrogatories that may be served in a proceeding before the Commission to 50. Rule 103-851 of the Commission's Rules of Practice and Procedure governs written interrogatories and requests for production of documents and things in Commission proceedings. Rule 103-851(A) provides that "[a]ny material relevant to the subject matter involved in the pending proceeding may be discovered unless the material is privileged or is hearing preparation working papers prepared for the pending proceeding." Rule 103-851 includes no restriction on the number of written interrogatories that a party may serve, and no such restriction is included in any other Commission rule. Rule 103-854 (and revised Rule 103-835) of the Commission's Rules of Practice and Procedure provides

that the South Carolina Rules of Civil Procedure govern all discovery matters not covered in the Commission's rules. This rule, however, should not be construed to make Rule 33(b)(8)'s 50-request limit apply on a generic basis to Commission proceedings. Rule 103-854 does not apply with respect to written interrogatories because the Commission has its own detailed and exhaustive rule on written interrogatories.

5. Rule 103-851 contains significant detail with regard to written interrogatories, and some of the language of Rule 103-851 is very similar to that in Rule 33. For example, Rule 103-833 provides that "[e]ach interrogatory shall be answered separately and fully in writing, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer." Rule 33 contains almost identical language: "[e]ach interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer." It is clear that the Commission imported certain requirements for written interrogatories from Rule 33 into Rule 103-851, and it should be equally clear that if certain other requirements of Rule 33 – such as the question limit of 33(b)(8) – are not contained in Rule 103-851, it was the Commission's intention to leave those requirements out.

6. A 50-question limit for written interrogatories is such a major restriction on discovery in cases before the Commission that the Commission undoubtedly would have specified that limit in its own rules of practice and procedure, rather than remaining silent and leaving parties to wonder whether

the Rule 33(b)(8) restriction applies. If the Commission wished to include a limit on the number of written interrogatories parties could serve in a Commission proceeding, the Commission would have specified that limit in Rule 103-851. Rule 103-851's silence on whether there is a limit to the number of written interrogatories a party can serve, therefore, means the Commission intended there to be no such generic limit.

7. Imposing a generic 50-question limit on written interrogatories in proceedings before the Commission, moreover, would be bad policy. Commission Rule 103-851 provides for a wide scope of discoverable information, recognizing that in order for the Commission to effectively regulate a complex industry, the Commission and interested parties must have access to extensive information that can only be provided by the utility. The Commission took this same view when it rejected a request to include a 50-question limit consistent with Rule 33(b)(8) in the procedural order established in a recent telecommunications proceeding. See *Docket No. 2003-326-C – Analysis of Continued Availability of Unbundled Local Switching for Mass Market Customers Pursuant to the FCC's Triennial Review Order* and *Docket No. 2003-327-C – Availability of Unbundled High Capacity Loops at Certain Locations and Unbundled High Capacity Transport on Certain Routes Pursuant to the FCC's Triennial Review Order*, Order Denying Reconsideration, Order No. 2004-500 at 6-7 (2004) (“Order No. 2004-500”). In that order, the Commission stated that “factors weigh overwhelmingly against such a limit.” *Id.* at 6-7. Those factors included the need for the record in the proceeding to include as much information

as possible, the fact that the amounts and issues in controversy in the proceeding were substantial by any measure, and the importance of the issues at stake in the proceeding. *Id.* The Commission concluded that “rather than arbitrarily establishing a limit on the number of interrogatories that can be served in this proceeding . . . it is more appropriate for the Petitioners (and any other recipient of discovery) to file objections if and when they believe they have been served with discovery that is excessive.” *Id.*

8. Like the proceeding in Order No. 2004-500, it is important for parties in the instant proceeding to have access to as much information as possible to evaluate PEC’s fuel costs. Also, there is no question that the amounts at issue in this proceeding are substantial. Nucor alone pays millions of dollars in PEC fuel costs each year, and fuel costs for all PEC’s South Carolina retail customers are on the magnitude of hundreds of millions of dollars a year. Finally, there is no question that the issues being addressed in this proceeding are of great importance.

9. It is important to recognize that a fuel proceeding is one of only a few ways for utility customers to ensure that the costs the utility is passing through rates are reasonable. As it is, the short timeframe in which fuel proceedings have to be conducted make it close to impossible to do a thorough analysis of the utility’s costs and operations. Hamstringing customers’ efforts to gather information by imposing a 50-question written interrogatory limit would only limit further the ability of customers to effectively participate in such proceedings.

10. PEC should not be heard to argue that answering more than 50 written interrogatories in a fuel proceeding is unduly burdensome. PEC is a sophisticated company that has decades-worth of experience in the South Carolina regulatory process. As a regulated monopoly, in exchange for the exclusive right to serve customers in its service territory, PEC has agreed to make its costs subject to scrutiny by its customers and the Commission. PEC puts on a fuel case each year. In last year's PEC fuel proceeding, Nucor served over 50 data requests on PEC, and PEC did not invoke Rule 33. In fact, Nucor has participated in Commission proceedings involving PEC since 1987 and, to Nucor's recollection, the Commission has never imposed such a limit. PEC clearly has had the resources necessary to answer more than 50 data requests in the past, and there is no reason to believe that PEC does not have the resources to answer more than 50 data requests now. Ironically, a generic 50-question interrogatory limit in Commission proceedings would almost certainly lead to more widespread use of depositions, which would probably end up taking more of PEC's time and resources than if PEC simply made a reasonable effort to answer data requests.

11. Further, under the Commission's revised Rules of Practice and Procedure, parties now have 20 days to respond to data requests – twice as long as they had under the prior rules. In this proceeding, Nucor gave PEC 20 days to respond to both sets of data requests, even though the revised rules were not technically in effect at the time those requests were served. The increased amount of time parties now have to respond to data requests is another reason

why a generic 50-question limit on data requests is unnecessary and unreasonable.

12. If the Commission agrees with PEC that Rule 33(b)(8)'s restriction on the number of written interrogatories applies on a generic basis in Commission proceedings, then the restriction should not apply to requests for production of documents. Requests for production of documents are governed by Rule 34 of the South Carolina Rules of Civil Procedure, and Rule 34 includes no request limit similar to that included in Rule 33. Applying a 50 question limit to written interrogatories but no limit to requests for production of documents would be cumbersome because many of Nucor's data requests include both requests for written responses by PEC and the production of documents. Nevertheless, if the Commission applies Rule 33(b)(8)'s 50-question limit on a generic basis as PEC insists, the Commission should not expand Rule 33 beyond its intended scope. If the Commission rules that Rule 33's 50-question limit applies, then in accordance with Rule 34, the Commission should clarify that there is no limit on the number of document requests Nucor may submit to PEC, and the Commission should direct PEC to respond to all of Nucor's requests for production of documents.

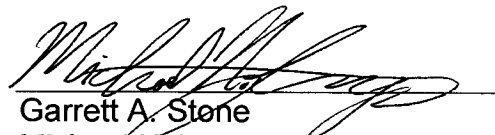
13. Finally, if the Commission agrees with PEC that Rule 33 applies in this proceeding (whether the Commission determines that the 50-question limit applies to both written interrogatories and requests for production of documents and things or just to written interrogatories), then Nucor respectfully requests that the Commission grant Nucor leave to ask more than 50 data requests. Good

cause exists for the Commission to grant Nucor's request. Fuel proceedings are complex proceedings that require the examination of extensive information on a utility's plant operations and fuel procurement practices. Nucor would be unable to obtain the information it needs to fully evaluate PEC's fuel proposal and to effectively participate in this proceeding unless PEC responds to Nucor's pending data requests, and Nucor is free to ask further data requests as the need arises.

WHEREFORE, for the reasons set forth above, Nucor moves this Commission to issue, on an expedited basis, an order compelling PEC to: (1) immediately provide full and complete responses to Nucor's first set of data requests; (2) provide full and complete responses to Nucor's second set of data requests no later than twenty days after the date the second set was issued; and (3) provide responses to any additional data requests Nucor may serve in this proceeding. In the alternative, Nucor requests that the Commission grant Nucor leave to ask PEC more than 50 data requests.

Respectfully submitted,

BRICKFIELD, BURCHETTE, RITTS &
STONE, P.C.



Garrett A. Stone
Michael K. Lavanga

1025 Thomas Jefferson Street, NW
Eighth Floor, West Tower
Washington, DC 20007
(202) 342-0800
(202) 342-0807 (Fax)
gas@bbrslaw.com

MOORE & VAN ALLEN, PLLC

Thomas S. Mullikin
Robert R. Smith II

100 North Tryon Street
Suite 4700
Charlotte, North Carolina 28202
(704) 331-1000
(704) 339-5870 (fax)
tommullikin@mvalaw.com
robsmith@mvalaw.com

Counsel for Nucor Steel – South
Carolina

Date: April 27, 2007

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PUBLIC SERVICE COMMISSION OF
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DOCKET NO. 2007-1-E

In the Matter of:

Carolina Power & Light Company
d/b/a Progress Energy Carolinas, Inc.
Annual Review of Base Rates
For Fuel Costs

Certificate of Service

This is to certify that a copy of the foregoing document, **Nucor Steel-South Carolina's Motion to Compel or, in the Alternative, Request for Leave to File More than 50 Data Requests**, was served upon the following parties at the addresses set forth by first-class mail, electronic mail, telefax, or Federal Express on this the 27th day of April, 2007:

Len S. Anthony, Esq.
*Carolina Power and Light Company d/b/a
Progress Energy Services Company*
Legal Department - PEB 17A4
Post Office Box 1551
Raleigh, NC 27602

Florence P. Belser, Esq.
Nannette S. Edwards, Esq.
Wendy B. Cartledge, Esq.
Office of Regulatory Staff
Post Office Box 11263
Columbia, SC 29211


Michael K. Lavanga

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FILED